IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.8062 OF 2004

1. Zaheda Abdul Ahad, aged 38,
2. Shamsul Aarefeen Zainulabedin aged 46,
3. Fazlur Reheman Habibur Raheman aged 41,
4. Sirajunnisa Naseem Ahmed, aged 53,
5. Aasif Iqbal Naseem Ahmed aged 44.
   (All residents of Apna Super Market,
   Shop No.160, Old Agra Road,
   Malegaon (Dist-Nasik) 423 203. ....Petitioners

Versus

1. Director of Town Planning
   Maharashtra State,
   Central Bldg, Pune.

2. Dy. Director of Town Planning,
   Commissioner Office,
   Nasik Road, Nasik.

3. Asst.Director of Town Planning
   Old Corproation Bldg, Nasik.

4. District Collector, Nasik
   office of District Collector,
   Nasik.

5. State of Maharashtra

6. Malegaon Municipal Corproation
   through Municipal Commissioner
   Malegaon, Dist-Nasik.

7. Special Land Acquisition Officer,
   Dushkal No.2, Nasik. ....Respondents.

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Sri C.G.Gavnekar with Sri G.S. Hiranandani with Deepa Sawant for the petitioners.

Smt.S.S.Bhende, AGP for the respondent Nos.1 to 5 and 7.

Sri S.M.Sabrad for the respondent No.6.

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CORAM: R.M.S.KHANDEPARKAR & V.M.KANADE, JJ.

DATE : SEPTEMBER 21, 2005.

-ORAL JUDGEMENT (PER R.M.S.KHANDEPARKAR, J)

1. The petitioners seek de-reservation of plot bearing Survey No.99 to the extent of 8300 sq.mtrs., now forming Survey No.99-A and site Nos. 142 and 145 situated at Malegaon, District- Nasik from development plan as applicable to Malegaon, District-Nasik, and to quash the order dated 10th October 2003 issued by the respondent no.1 and further for declaration that the petitioners are entitled to use for themselves the said area of plot now forming part of Survey no. 99-A.

2. Brief facts which are relevant for decision in the matter are that; the first revised development plan of Malegaon under the Maharashtra Regional and Town Planning Act,1966 was sanctioned by Government Resolution dated 21.2.1986 and the same came into force with effect from 1.4.1986. In the said development plan, the area

comprised under Survey No.99 was declared reserved for high school and play ground. An attempt by the predecessor-in-title of the petitioners' land to develop the said plot for residential and industrial purpose proved futile on account of rejection of their application on 25.6.1986 consequent to the fact that the said development plan had already came into force. Thereupon, notice under Section 127 of Maharashtra Regional & Town Planning Act hereinafter called as ''the said Act'', was issued by the predecessor-in-title of the petitioners on 28th June 1995. However, the same was not pursued any further. By Deed of Sale dated 8th June 1998, the petitioners purchased an area admeasuring 8300 sq.meters out of total area of 14000 sq.meters of land of the plot bearing survey No.99 and, more particularly, now comprised under survey no. 99-A. By another Sale Deed, balance area of the said survey number was purchased by one Nathmal Sitaram Maniyar. The notice dated 6th October 2003 under section 127 of the said Act came to be served upon the respondents by the petitioners. By letter dated 10th October 2003, the Commissioner of Malegaon Municipal Council informed the petitioners that the notice did not contain certain documents and called for the copies of the same. The petitioners, after obtaining the copies of the documents furnished the same

to the Commissioner and Malegaon Municipal Council on 19th July 2004. However, since the respondents had failed to take necessary steps in accordance with the provisions of law under Section 127 of the said Act, the petitioners filed the present petition seeking reliefs as stated above.

3. It is the case of the petitioners that having served the notice in terms of Section 127 of the said Act as long back as on 6th October 2003 and the respondents having failed either to acquire the land or to take necessary steps for its acquisition within a period of six months from the date of service of the said notice and as the said period had already expired, reservation in relation to plot in question should be deemed to have lapsed and the plot should be released from the said reservation for the purpose of development by the petitioners. It is their further case that the respondents have not only failed to acquire the plot in question but have also not taken any step for commencement of acquisition proceedings in relation to the said plot, even till this date.

4. The Respondents, on the other hand, contended that though the notice was issued on 6th October 2003, it was

not in compliance with Section 127 of the said Act, and requirements thereof were complied only on 19th July 2004, and therefore, the period available for the respondents to take steps for commencement of acquisition had not lapsed on the date of filing of the petition and, therefore, the petition is premature. It is also the case of the respondents that they have already taken necessary steps for moving necessary resolution by General Body of the Corporation and appropriate decision would be taken in that regard by the corporation whereby the plot can be acquired.

5. Learned advocate appearing for the petitioners placing reliance in the decision of Apex Court in the matter of **Municipal Corporation of Greater Bombay Versus Dr.Hakimwadi Tenants Association & others reported in 1988 Maharashtra Law Journal 1**, and in unreported decision of Division Bench in the matter of **Nathmal Sitaram Maniyar Versus Commissioner,** in Writ Petition No. 1071 of 2004 delivered on 16.8.2004 as well as in the matter of **Khalid Umar Salim Ahmed & Siddiqui & Ors. Versus Commissioner, Malegaon Municipal Corporation** in Writ Petition No.4517 of 2003 delivered on 19th April 2004, submitted that certain documents, copies of which were demanded by the respondents in answer to the notice

were not required to be furnished in relation to the notice under section 127 of the said Act, besides that all those documents were already in possession of the respondents themselves and can by no stretch of imagination be said to be the statutory requirement under section 127 of the said Act. He has further submitted that in the absence of the Resolution by the Corporation to acquire the plot in question, it can not be said that there is any step taken for acquisition of the plot in question. According to learned Advocate for petitioners, the period of six months as specified under section 127 of the said Act would commence from the date of service of notice upon respondents, requiring either to purchase the plot or to initiate acquisition proceedings. On the other hand, the learned advocate for respondents submitted that since respondents have already taken steps for placing the matter before General Body of Corporation it would disclose that the steps taken by the respondents were in the direction of acquisition of the land and further that documents which were asked for were relating to plot in question, and therefore, cannot be said to be irrelevant or immaterial documents for appropriate decision regarding purchase or acquisition of land and as they were furnished as late as on 19th July 2004, the period of limitation for commencement of acquisition

proceedings would not commence prior to the said date.

6. Upon hearing the learned advocates for the parties and on perusal of record, following questions arise for our consideration.

(i) Whether the notice stated to have been issued by the petitioner was in accordance with the provisions of law comprised under Section 127 of the said Act?

(ii) What is the day on which the period of limitation of six months for taking steps for acquisition proceedings under Section 127 of the said Act would commence ?

(iii) Whether consequent to service of notice under Section 127 of the said Act, the display of subject regarding the acquisition proceedings relating to the concerned plot on the agenda of the meeting of General Body of Corporation would constitute "a step" within the meaning of the said expression under section 127 of the said Act in relation to commencement of

acquisition proceeding thereunder ?

7. Section 127 of the said Act reads thus:- If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional plan, or final Development plan comes into force or if the proceedings for the acquisition of such land under this Act or under the Land Acquisition Act, 1894, are not commenced within such period, the owner or any person interested in the land may serve notice on the Planning Authority, Development Authority or as the case may be, Appropriate Authority to that effect; and if within six months from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the relevant plan.

8. Perusal of the said Section would disclose that it does not specify any particular requirement or format of

the notice to be issued under the said Section. However, the phraseology of the said section, sufficiently indicates that such a notice should be given by the owner or person interested to invite concerned authorities to take appropriate decision in relation to acquisition of plot in question. Being so, the intention of legislature which is abundantly clear from the statutory provision is that the concerned authorities should take prompt steps either to acquire the land or to take necessary steps for commencement of its acquisition within the specified time from the date of service of such notice. Evidently, therefore, the notice is to put the concerned authorities on guard, that in case the authorities fail to acquire the land or to take steps to commence acquisition proceedings within the specified period, the owner or the person interested who had served notice would be entitled to develop the land to his advantage, albeit, subject to other rules and regulations regarding construction activities and development of land. It is further clear that there is a deeming provision of law as regards the effect of failure on the part of the concerned authorities to take appropriate steps either to acquire or to commence acquisition proceedings within the specified period from the date of receipt of the notice. Being so, the notice which gives necessary indication to

the concerned authorities that appropriate steps either to acquire or to commence the acquisition of plot should be taken within a period of 6 months from the date of service of notice in relation to the described plot alongwith the identity of the person issuing notice and his interest in the land, would be valid and appropriate notice under Section 127 of the said Act. Undoubtedly, the notice should disclose the identity of the owner and the person interested as well as the description of land in question alongwith the necessary details about the nature of interest of the person interested in land.

9. In the case in hand, the notice dated 6th October 2003 clearly disclosed that the authorities were required either to acquire the plot within a period of six months from the date of service of the said notice or allow the same to be utilised by the petitioners for its development, by de-reserving the said plot for the purpose for which it was reserved i.e. high school and playground. It is not in dispute that the notice sufficiently disclosed the description of the plot and the identity of the person issuing the notice as well as the nature of interest in the plot. The notice clearly indicated the necessity to exercise an option available to the authority under Section 127 of the said Act, and

therefore, no fault can be found with the said notice and it is to be held as valid and proper notice under Section 127 of the said Act.

10. As regards the date of commencement of period of limitation, in fact, the said Section on the face of it makes it clear that such period would commence from the date of service of the notice. Relevant expression in the said Section in that regard reads thus, "within six months from the date of service of such notice". In other words, once a valid notice is served upon the respondents, period of six months would commence from the date of service of the notice. The provisions of Section 127 of the said Act nowhere disclose that such notice has to be accompanied by any document as such. It only requires that the notice should be by the owner or any person interested in the land. The term ‘‘owner’’ has been defined under section 2(18) of the said Act to include any person for the time being receiving or entitled to receive, whether on his own account or as agent, trustee, guardian, manager or receiver for another person or for any religious or charitable purpose, the rents or profits of the property in connection with which it is used. As per the definition of the term ‘‘owner’’, it would not only include title holder of the land but

also landlord who is entitled to collect rents either on his own account or even on behalf of another person having ownership right of the property. Undoubtedly, the term ‘‘person interested’’ has not been defined under the said Act. However, it is to be noted that Section 127 essentially relates to rights of statutory body to acquire land and therefore, the expression "person interested" will have to be understood bearing in mind the meaning assigned thereto under Land Acquisition Act 1894. Section 3(b) of the Land Acquisition Act defines expression ‘‘person interested’’ includes all persons claiming an interest in compensation to be made on account of the land acquisition act under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land’. In other words the definition is so wide that it would include all the persons having interest which could have statutory recognition. Once the notice is issued either by the owner or such interested person requiring the authority to exercise its option in terms of Section 127 it would be a valid notice as stated above, and therefore, from the date of service of such notice, period of six months would commence. It cannot be said that such period would stand postponed to any other date merely because the concerned authorities make further

enquiries with the person issuing notice, except in cases, where the notice does not disclose correct description of the plot or the authorities are unable to ascertain either from the notice itself or from the records available with such authority the interest of the person issuing the notice in the plot in question or it does not disclose identity of such person or for other valid and lawful reasons. In other words, in case it is not clear on account of absence of disclosure of the said fact in the notice itself, or on account of non availability of the relevant information with the authorities about the interest of a person serving notice, certainly, the authorities would be empowered to enquire from the author of the notice to disclose such interest of the author in the land in question and till such interest is disclosed the period of limitation would not commence. However, such inquiry if made, merely to facilitate the authority to delay the steps which they are required to take, that by itself will not be sufficient to postpone commencement of the period of limitation.

11. In the case in hand, after service of the notice dated 6th October 2003, it is not the case of the respondents that they had any difficulty in ascertaining

interest of the petitioners in the plot in question. The letter dated 10th October 2003 written by the respondent authority to the petitioners did not disclose any doubt in the mind of the authorities about the interest of the petitioners in the plot in question. Undoubtedly, 7/12 extract was directed to be produced. However, 7/12 extract does not constitute a title document. It is merely a document for the benefit of government in relation to revenue accounts pertaining to land in question. Hence, the contention that the period of limitation would commence only after furnishing documents which were called for , i.e. on 19th July 2004 as canvassed on behalf of the respondents can not be accepted, as the period of limitation in the matter of acquisition of land would commence from the date of service of notice dated 6th October 2003.

12. As regards the step for commencement of acquisition proceedings, the learned advocate for the petitioners has fairly submitted that if a resolution is passed by the Corporation in answer to the notice served upon corporation under Section 127 to acquire the land then it would constitute a step in the direction of commencement of acquisition proceedings. He has, however, contended that merely because agenda is prepared

for General Body meeting disclosing the subject in relation to acquisition proceedings of land pursuant to service of a notice served under Section 127, that itself would not constitute a step for commencement of acquisition proceedings as the agenda itself would not disclose any decision of Corporation. For compliance of Section 127, what is required, is either acquisition itself or the step by appropriate authority for commencement of acquisition proceedings and therefore, unless the appropriate authority decides to acquire the land, it cannot be said that there is any step taken for commencement of acquisition of plot.

13. Section 127 speaks of either acquisition of plot or steps to be taken for commencement of acquisition proceedings. The section also provides that the acquisition or the steps towards commencement of acquisition proceedings should be taken, ‘‘as aforesaid’’. The expression ‘as aforesaid’’ in the Section 127 obviously refers to the provisions comprised under Section 126 of the said Act. Section 126 of the Act specifically provides the acquisition of land to be either by way of agreement or by adhering to the

provisions of Land Acquisition Act by the Appropriate Authority. Section 2(3) defines the term "Appropriate Authority" to mean, ‘any public authority on whose behalf land is designated or a public purpose in any plan or scheme and which is authorised to acquire. The Corporation is the acquiring authority in the case in hand. The decision as regards the acquisition of land was required to be taken by the Corporation. The fact that the decision of such type was essentially required to be taken by the General Body of Corporation is not in dispute. It is the case of respondents themselves that proposal for acquisition of land in question was sought to be placed before General Body in the meeting which was taken on 30th October 2004. Though, the materials on record do not disclose, the learned advocate for corporation has fairly admitted that the meeting was held on 30th October 2004, but no decision was taken by the General Body of corporation in relation to the said proposal. In other words, the authority which was required to take necessary decision on the issue as to whether the land was to be acquired or not, did not take any decision and the same situation continues till this date. Being so, mere fact that the proposal was placed before the authority, which was the competent to decide about the said fact, that itself cannot amount to a step

for commencement of acquisition proceedings. It is pertinent to note that the steps spoken of are for commencement of acquisition of the land and not mere consideration of the proposal in relation to acquisition. Being so, unless appropriate authority decides to acquire land, it cannot be said that any step has been taken towards commencement of the acquisition proceedings. In the case in hand, as already observed above, since no steps are taken, there is no scope to contend that there is compliance of requirements regarding the steps for commencement of acquisition proceedings regarding the plot in question within the meaning of the said expression under the said statutory provision. Whether mere such decision without any further action will be sufficient to constitute steps for commencement of acquisition proceedings is yet another question, with which we are not concerned in this matter.

14. The Apex Court in **Municipal Corporation of Greater Bombay versus Dr.Hakimwadi Tenants Association and Other's case reported in 1988 Mh.L.J.** had held that, ''Section 127 of the Act is a part of the law for acquisition of lands required for public purposes, namely for implementation of schemes of town planning. The statutory bar created by section 127 providing that

reservation of land under development scheme shall lapse if no steps are taken for acquisition of land within a period of six months from the date of service of the purchase notice, is an integral part of the machinery created by which acquisition of land takes place. The word ‘aforesaid’ in the collocation of the words ‘no steps as aforesaid are commenced for its acquisition obviously refer to the steps contemplated by section 126(1).’’

15. The view that we are taking in the matter is clearly fortified by the decision of the Division Bench in Writ Petition No.4517 of 2003 delivered on 19th April 2004 in the matter of **Khalid Umar Salim Ahmed and Siddiqui Versus The Commissioner, Malegaon, Municipal Corporation.**

16. For the reasons stated above, therefore, the petition succeeds. The rule is made absolute in terms of the prayer clause (a), (b) and (c), subject to development rules and regulations.

17. No order as to costs.

(R.M.S.KHANDEPARKAR,J)

(V.M.KANADE,J)